

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
In the Matter of: )

Implementation of the Satellite Home )  
Viewer Improvement Act of 1999; )

Broadcast Signal Issues )  
\_\_\_\_\_)

CS Docket No. 00-96

**To: The Commission**

**OPPOSITION TO PETITION FOR MODIFICATION OR CLARIFICATION**

The Satellite Broadcasting and Communications Association (“SBCA”) hereby opposes the Emergency Petition (“Petition”) filed by the National Association of Broadcasters (“NAB”) and the Association of Local Television Stations (“ALTV”) in this proceeding. As set forth below, the relief sought by NAB and ALTV in their Petition is contrary to the applicable regulation and beyond the scope of the authority Congress granted the Commission in this area. Moreover, as a practical matter, granting the relief sought by NAB and ALTV would boomerang on their members by resulting in cutting off access by EchoStar’s subscribers to local broadcast stations in multiple major markets. Apparently, NAB and ALTV would rather shoot themselves and their members in the foot for political gain than allow satellite carriers to bring local television signals to as many subscribers as possible.

As a legal matter, it is quite clear that NAB and ALTV’s proposal to rewrite the Commission’s regulation to impose a “one-dish” solution is contrary to both the language

and the intent of the rule as adopted. The language of the applicable rule is straightforward:

Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment *at their own expense or for an additional carrier charge* in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.<sup>1</sup>

The NAB and ALTV simply want to read the highlighted words out of the regulation, arguing that a satellite carrier violates the rule even when the second dish needed to receive certain local signals is provided free of charge. Such a radical rewriting of this carefully crafted rule is plainly unwarranted.

Moreover, if the Commission had attempted to impose the rule NAB and ALTV now seek – instead of the rule that was actually adopted – such a requirement would have been contrary to the manifest intent of the statute. In the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Congress gave very clear guidance on the scope of the discrimination it was seeking to prohibit in the must-carry context. In particular, it provided that satellite carriers must transmit the local signals “on contiguous channels,” that they must “provide access to such station’s signals at a nondiscriminatory price” and that the signals must be provided “in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.”<sup>2</sup> Nothing in this statutory language suggests an intent to prohibit provision of a second satellite dish to customers free of charge as a means of permitting access to certain local signals. Indeed, the legislative history indicates that Congress considered and rejected a “one-dish” requirement,<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 76.66(i)(4) (emphasis added).

<sup>2</sup> 47 U.S.C. § 338(d).

<sup>3</sup> Compare House Conferees’ Counteroffer of the Copyright Satellite Statutory License Improvement Act, Discussion Draft, at 27 (Oct. 15, 1999) (including language that local stations must be provided “without the need to install an additional reception antenna or any other additional equipment”) with SHVIA, 47 U.S.C. § 338(d) (containing no such provision).

which strongly supports the view that Congress did not intend for the Commission to impose any such requirement.

In any event, apart from the fact that their position is legally unjustified, the NAB and ALTV appear to be overlooking entirely the practical effect of what they are seeking. The result of imposing a “one-dish” rule (even assuming such a rule were legally authorized) would be to cause the curtailment of satellite distribution of *all* local-into-local signals in multiple major markets, since the satellite channel capacity is simply not available at this time to provide “one-dish” access in all local markets. In other words, the NAB and ALTV seem more interested in scoring political points than in advancing their avowed aim of increasing satellite distribution of local broadcast signals.

NAB has loudly proclaimed its opposition to the proposed merger of EchoStar and Hughes Electronics. Meanwhile, it has demanded that satellite carriers provide more markets with local-into-local service. It has demanded that satellite carriers offer all the local broadcast signals in those markets. And now it is asking EchoStar, which through no fault of its own has not yet received delivery of its spot beam satellites, to implement a one-dish must carry solution. The irony, of course, is that the proposed merger would be the most effective, efficient, and speedy way to achieve all these professed goals of NAB. The fact that the broadcasters would rather stick a finger in the eye of the DBS industry than promote the stated goals of their members should not be ignored by this Commission.

Lost in the blustering of the broadcasters are the American consumers, who have consistently voted with their remotes for popular local stations on a competitively priced and high-quality MVPD service. EchoStar’s interim must carry plan provides for this. It preserves existing local carriage in all the local markets currently served by EchoStar. It allows

subscribers to gain access to additional must carry stations through a simple, toll-free phone call and free equipment and installation. It avoids significant disruption to consumers while allowing EchoStar to carry hundreds of additional broadcast signals. Yet, were the Commission to adopt the broadcasters' proposal, EchoStar would be forced to deny local broadcast service to up to a million subscribers. In times of stress, the temptation is often strong to cut off one's nose to spite one's face. Unfortunately, in this case the broadcasters have succumbed to that temptation, but the potential victims are the television-viewing public. The Commission should not let the public be harmed by the cross-fire from a party more concerned with the heat of the fray than with the consequences of its actions.

### **CONCLUSION**

For the reasons stated above, the Commission should deny the Emergency Petition of NAB and ALTV.

Respectfully submitted, etc.

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January 23, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of January, 2002, I caused a copy of the foregoing Opposition to Petition for Modification or Clarification to be served by overnight mail on the following:

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